761551N25A - SH-AD-32A (2/72)

COUNTY OF LOS ANGELES

# SHERIFF'S DEPARTMENT

*A Tradition of Service*

DATE: December 23, 2009

OFFICE CORRESPONDENCE FILE NO. SH2225821

FROM: ERIC B. SMITH, COMMANDER
LEADERSHIP AND TRAINING DIVISION

TO: KARYN MANNIS, CAPTAIN
INTERNAL AFFAIRS BUREAU

SUBJECT: **EXECUTIVE FORCE REVIEW COMMITTEE DISPOSITION:**
**DEPUTY CLARENCE GALLEGOS #[redacted]**
**SPECIAL ENFORCEMENT BUREAU**

On August 10, 2008, at about 2045 hours, Deputy Clarence Gallegos shot 32-year-old Suspect Gerardo Arvallo during a hostage rescue operation.

Century Station patrol personnel arrived at the location and contacted 28-year-old Victim [redacted] who was shot in the stomach by her [redacted] and [redacted] of their 2-year-old child, Suspect Arvallo. Victim [redacted] stated that Suspect Arvallo had been drinking heavily and was still inside the location, armed with a handgun, and was threatening not to be taken alive. The suspect was also holding their 2-year-old [redacted] hostage. Victim [redacted] feared for her child's safety. Century Station deputies contained the location and tried to contact Suspect Arvallo via their radio car public address system; however, he refused to exit the location. Communication with Suspect Arvallo was established via a cell phone, but the suspect refused to release his [redacted] and threatened to kill himself. Based on the barricaded incident and developing information, the Sheriff's Special Weapons Team and Crisis Negotiations Team were deployed to the location.

Due to the initial call for service and subsequent contacts with the suspect, through family members, as well as a Sheriff's Department negotiator, the Special Weapons Team Commander, Lieutenant Phil Hansen, determined the barricaded incident had transitioned into a hostage rescue operation.

Lieutenant Hansen stated the following factors were known at the time:

1. A victim had been shot.
2. The suspect was armed with a gun.
3. The suspect was holding his child as a hostage.
4. The suspect made suicidal comments indicating he would be seen in a coffin.
5. The incident was an ongoing threat, which presented both immediate and imminent danger for the child, the entry team, and the suspect himself.
6. The suspect was using his child as a human shield.

Based on the totality of the circumstances and the known factors, a crisis entry team was staged for a hostage rescue operation. Lieutenant Hansen stated all the information that he received was communicated to the Special Weapons Team members, who were in tactical positions of containment, via Sheriff's hand-held radio.

As the Special Weapons Team was deployed, Major Crimes Detective [redacted] had already established a communications link with Suspect Arvallo via a cell phone for purposes of negotiations. While Detective [redacted] was speaking to the suspect, he went inside a detached residence in front of the suspect's house which afforded him an unobstructed view of the suspect's residential rear window. During their conversation, Detective [redacted] stated that Suspect Arvallo appeared at the rear window of the target location several times using the child as a human shield.

At one point, when the suspect appeared at the window without the child, Deputy Gallegos, assigned as rear containment sniper, fired one round from his Department-issued, 9mm, Heckler & Koch MP5, striking the suspect in the left eye. The crisis team quickly made an explosive breached entry into the location and rescued the child. Suspect Arvallo sustained one gunshot wound to the head. He was pronounced dead at the scene by Emergency Services Detail paramedics.

Victim [redacted] sustained a single gunshot wound to the abdomen. She was treated at St. Francis Medical Center. The 2-year-old child, Victim [redacted] was not injured.

A .22 caliber semiautomatic pistol, and one expended 9mm shell casing was recovered at the scene.

On December 10, 2009, the Executive Force Review Committee convened and conducted a review regarding the facts of this case. The applicable policies that were evaluated by the committee were: MPP §§ 3-01/025.00, Use of Force; 3-01/025.30, Use of Firearms and Deadly Force; 3-01/025.10, Unreasonable Force; and 3-01/050.10, Performance to Standards.

Concerning:

MPP § 3-01/025.00, Use of Force, MPP § 3-01/025.30, Use of Firearms and Deadly Force, and MPP § 3-01/025.10, Unreasonable Force, the Committee determined that the force used by Deputy Clarence Gallegos #[redacted] was reasonable and necessary and in compliance with Department policy.

MPP § 3-01/050.10, Performance to Standards, the Committee determined that the tactics employed by Deputy Clarence Gallegos #[redacted] in this incident were within Department Policy.

Eric B. Smith

Eric B. Smith, Commander

EBS:YLW/ylw

# Table of Contents
## SH2225821

Miscellaneous Documents:

Admonition for Sworn

Los Angeles County Sheriff's Department

# Officer Involved Shooting



| Report Date: 10/15/09 | Bureau/Station/Facility: Special Enforcement Bureau | Admin. Invest.? ☐ | Hit? ☒ |
|---|---|---|---|

## Incident Information

| | |
|---|---|
| URN: 008-17909-2112-013 | Date: 08/10/08 Time: 2044 hours |
| City or Station: Century Station | Nature of Incident: Armed barricaded suspect (245 w/firearm) resulted in a hostage rescue operation of a two-year old child. SEB Deputy Gallegos, assigned to rear containment as a sniper fired one round from his department-issued, 9mm, HK MP5, striking the suspect in the head just prior to the crisis team making entry. Child was successfully rescued. The suspect was pronounced dead at the scene. |
| Location: [redacted] Los Flores Blvd., Lynwood | |

**Location Type** (*circle one or more*): **Backyard**, Beach, Business, Freeway, Industrial, Park, Parking Lot, **Residence**, Rural, School, Street, Other: ______

**Lighting** (*circle only one*): **Darkness**, Daylight, Other, Street Lights

**Weather** (*circle only one*): Clear, **Cloudy**, Fog, Rain

Distance: 30 feet

**Incident Type** (*circle one or more*): Accidental, **Armed Person**, Fleeing Suspect, Foot Pursuit, Gun Take Away, Moving Vehicle, Sniper/Ambush, Startle, Struggle Involved, Traffic Stop, Unarmed Person, Unintentional, Vehicle Pursuit, Warrant Service, Warning Shot, Other: Hostage rescue

**Initiated by** (*circle only one*): Arrest Warrant, **Call**, Observation, One Person Unit, Other, Search Warrant, Two Person Unit

**Prior Activity** (*circle only one*): Detective, Inmate Transport, **Other**, Routine Patrol

Total # of Shots Fired by Deputy: 1

Total # of Shots Fired by Suspect: 0

Aero Unit? ☒ Canine Unit? ☒

## Employee Witnesses

| Employee # | Last Name | First Name | M.I. | ShiftTime (*circle only one*): EM / PM / Day | ShiftType (*circle only one*): Regular / Overtime / Off Duty |
|---|---|---|---|---|---|
| [redacted] | Hansen | Phillip | C. | **PM** | **Regular** |
| [redacted] | Ramirez | Andres | | **PM** | **Regular** |
| | | | | | |

## Non-Employee Witnesses

| Last Name | | First Name | | M.I. |
|---|---|---|---|---|
| Street Address | City | Zip Code | Work Ph | Home Ph |
| Last Name | | First Name | | M.I. |
| Street Address | City | Zip Code | Work Ph | Home Ph |
| Last Name | | First Name | | M.I. |
| Street Address | City | Zip Code | Work Ph | Home Ph |

## Supervisors

| Employee # | Last Name | First Name | M.I | (*circle one or more*): On Duty / Present during shooting / Witness to shooting / Involved in shooting |
|---|---|---|---|---|
| [redacted] | Johnson | Donnie | R. | **On Duty** |
| [redacted] | Hansen | Phillip | C. | **On Duty** |

## Watch Sergeant

| Employee # | Last Name | First Name | M.I. |
|---|---|---|---|
| [redacted] | Jobling | James | R. |

## Watch Commander

| Employee # | Last Name | First Name | M.I. |
|---|---|---|---|
| [redacted] | Vera | Eliezer | - |

**PSTD Use Only**

**SH #** ______________

# Officer Involved Shooting

URN: 008-17909-2112-013



## Rollout Information

| Arrival Date | Arrival Time | Date Submitted | Date of Recommendation |
|---|---|---|---|
| 08/11/08 | 0200 hours | 10/15/09 | |

| Employee # | Last Name | First Name | M.I |
|---|---|---|---|
| [redacted] | Quichocho | Frank | F. |
| [redacted] | Gealta | Diana | V. |
| [redacted] | Slawson | Don | M. |

## Shooting / Force Information

### Method

(AW) Arwen
(BC) Baton:(Control)
(BI) Baton:(Impact)
(BF) Bodily Fluids
(CN) Canine
(CR) Carotid Restraint
(CH) Choke Hold
(CT) Control Holds:(Control Techniques)
(TT) Control Holds:(Team Takedown)
(TD) Control Holds:(Takedown)
(CE) Chemical
(OC) Chemical Agents (OC Spray)
(TG) Chemical Agents (Tear Gas)
(EX) Explosives
(FH) Firearm (Handgun)
(FR) Firearm (Rifle)
(FS) Firearm (Shotgun)
(FO) Firearm (Other)
(FB) Flashbang
(FL) Flashlight
(OE) Other Weapon: Edged
(OV) Other Weapon: Vehicle
(OB) Other Weapon: Blunt Object
(OO) Other Weapon: Other
(PK) Personal Weapon: Feet/Leg: (Kick)
(PS) Personal Weapon: Feet/Leg: (Sweep)
(PH) Personal Weapon (Hand/Arm)
(PP) Personal Weapon (Push)
(PO) Personal Weapon (Other)
(RS) Resistance
(CN) Restraint Device (Capture Net)
(RH) Restraint Device (Handcuffs)
(HB) Restraint Device:Hobble (Legs Only)
(TP) Restraint Device:Hobble (TARP)
(RE) Restraint Device: REACT Belt
(SP) Sap
(SH) Shield
(SG) 37mm Stinger
(SB) Sting Ball
(ST) Stun Bag
(TR) Taser
(UC) Uncooperative

### Type of Injury

(AB) Abrasion
(BR) Bruise
(BU) Burn
(CP) Complaint of Pain
(CO) Concussion
(DH) Death
(DI) Dislocation
(DB) Dog Bite
(FR) Fractures
(GS) Gunshot
(HB) Human Bite
(LC) Lacerations
(ND) Nerve Damage
(OD) Organ Damage
(PA) Paralysis
(PW) Puncture Wound
(SD) Soft Tissue Damage
(ST) Sprain/Twists
(UN) Unconscious
(RM) Refused Med Treatment
(NN) NONE

### Body Part Injured

(AD) Abdomen
(AK) Ankle
(AR) Arm
(BK) Back
(BT) Buttocks
(CH) Chest
(EL) Elbow
(FA) Face
(FE) Feet
(FI) Fingers
(GE) Genitals
(GR) Groin
(HD) Hand
(HE) Head
(HI) Hip
(IN) Internal
(KN) Knees
(LE) Leg
(NK) Neck
(SH) Shoulder
(WR) Wrist

### Brand

(AK) AK-47
(BN) Benelli
(BR) Beretta
(BW) Browning
(CH) Charter Arms
(CO) Colt
(DA) Davis Industries
(GL) Glock
(HA) Harrington & Richardson
(HI) Hi Standard
(HK) H & K
(IT) Ithica
(IV) Iver Johnson
(JE) Jennings
(LO) Lorcin
(LU) Luger
(MA) Marlin
(MO) Mossberg
(NC) NCI aka SKS
(NA) North American
(NO) Norinco
(RA) Raven
(RM) Remington
(RG) RG
(RI) RGI
(RO) Rossi
(SW) Smith & Wesson
(SR) Sturm Ruger
(ST) Sterling
(TA) Taurus
(WE) Weatherby
(WN) Winchester
(US) US Government
(YY) Handmade (Inmate)
(XX) Homemade (Non-Inmate)
(ZZ) Other Brand

### Caliber

(9) 9 mm
(10) 10 mm
(12) 12 guage
(20) 20 guage
(21) .22-250
(22) .22 caliber
(23) .223 caliber
(24) .243 caliber
(25) .25 caliber
(30) .308 caliber
(35) .357 caliber
(36) 30-60 caliber
(38) .38 caliber
(40) .40 caliber
(41) .410 guage
(44) .44 caliber
(45) .45 caliber
(50) 50 mm
(SL) Slug
(WW) Other caliber

### FORCE APPLIED *(one code per block)*

| Used By (E# or S#) | Used Against (E# or S#) | Method (Code) | Brand (Code) | Caliber (Code) | Authorized Weapon? (Y/N) | Authorized Ammunition? (Y/N) | Type of Injury (Code) | Body Part (Code) |
|---|---|---|---|---|---|---|---|---|
| E#1 | S#1 | FR | HK | 9 | Y | Y | DH | HE |
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# Officer Involved Shooting
# Involved Employee Information

URN: 008-17909-2112-013



## Involved Employee

**E 1**

| | | | |
|---|---|---|---|
| Employee # [redacted] | Last Name: Gallegos | First Name: Clarence | M.I.: G. |
| Sex: M Race: H | Rank: Deputy | Unit Assignment: SEB | Work Assignment (Unit #, Module, etc.): Sniper |
| ShiftTime (*circle only one*): EM **(PM)** Day | ShiftType (*circle only one*): **(Regular)** Overtime Off Duty | Intoxication/Drug Usage? ☐ | Substance Used: N/A |
| Hospital Admission? ☐ | Hospital Name: N/A | Coroner Case? ☐ | Coroner Case #: N/A — Interviewed? ☒ |
| Hrs of sleep prior to shooting: 8 | Duty Time (hrs): 8 | Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, **(Uniform w/ Vest)** | Other Factors: Hostage rescue operation |
| Age: [redacted] Height: 5'09 | Weight: 180 | | |
| Range Qualification Date: [redacted] | PPC Qualification Date: [redacted] | | Laser Training Date: [redacted] |
| Certified with Weapon Used? [redacted] | Patrol Certification? [redacted] | Certification Unit: [redacted] | Prior Shootings? ☒ Number of Prior Shootings: 3 Directed Force: [redacted] |
| Weapons Fired Brand: HK | Caliber: 9mm | # Shots: 1 | Weapons Fired Brand: Caliber: # Shots: |
| Field Training Officer Emp # [redacted] | Last Name [redacted] | First Name [redacted] | M.I. [redacted] |
| Field Training Officer Emp # [redacted] | Last Name [redacted] | First Name [redacted] | M.I. [redacted] |

**E__**

| | | | |
|---|---|---|---|
| Employee # | Last Name | First Name | M.I. |
| Sex: Race: | Rank: | Unit Assignment: | Work Assignment (Unit #, Module, etc.): |
| ShiftTime (*circle only one*): EM PM Day | ShiftType (*circle only one*): Regular Overtime Off Duty | Intoxication/Drug Usage? ☐ | Substance Used: |
| Hospital Admission? ☐ | Hospital Name: | Coroner Case? ☐ | Coroner Case # — Interviewed? ☐ |
| Hrs of sleep prior to shooting: | Duty Time (hrs): | Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, Uniform w/ Vest | Other Factors: |
| Age: Height: | Weight: | | |
| Range Qualification Date: | PPC Qualification Date: | | Laser Training Date: |
| Certified with Weapon Used? ☐ | Patrol Certification? ☐ | Certification Unit: | Prior Shootings? ☐ Number of Prior Shootings: Directed Force: ☐ |
| Weapons Fired Brand: | Caliber | # Shots | Weapons Fired Brand: Caliber # Shots |
| Field Training Officer Emp # | Last Name | First Name | M.I. |
| Field Training Officer Emp # | Last Name | First Name | M.I. |

**E__**

| | | | |
|---|---|---|---|
| Employee # | Last Name | First Name | M.I. |
| Sex: Race: | Rank: | Unit Assignment: | Work Assignment (Unit #, Module, etc.): |
| ShiftTime (*circle only one*): EM PM Day | ShiftType (*circle only one*): Regular Overtime Off Duty | Intoxication/Drug Usage? ☐ | Substance Used: |
| Hospital Admission? ☐ | Hospital Name: | Coroner Case? ☐ | Coroner Case # — Interviewed? ☐ |
| Hrs of sleep prior to shooting: | Duty Time (hrs): | Clothing (*circle only one*): Plain Clothes no Vest, Raid Jacket w/ Vest, Plain Clothes w/ Vest, Uniform no Vest, Raid Jacket no Vest, Uniform w/ Vest | Other Factors: |
| Age: Height: | Weight: | | |
| Range Qualification Date: | PPC Qualification Date: | | Laser Training Date: |
| Certified with Weapon Used? ☐ | Patrol Certification? ☐ | Certification Unit: | Prior Shootings? ☐ Number of Prior Shootings: Directed Force: ☐ |
| Weapons Fired Brand: | Caliber | # Shots | Weapons Fired Brand: Caliber # Shots |
| Field Training Officer Emp # | Last Name | First Name | M.I. |
| Field Training Officer Emp # | Last Name | First Name | M.I. |



See Other Side

# Officer Involved Shooting Suspect Information

URN: 008-17909-2112-013



## Suspect Information

**S 1**

| | | | |
|---|---|---|---|
| Last Name: Arvallo | | First Name: Gerardo | M.I.: - |
| AKA Last Name: N/A | | First Name: N/A | M.I.: - |
| Sex: M Race: H | Street Address: [redacted] | City: [redacted] | State & Zip Code: [redacted] |
| Work Phone: [redacted] | Home Phone: [redacted] | Social Security #: [redacted] | Driver's License #: [redacted] |
| Age: 32 D.O.B. 12-30-75 | Height: 5/10 Weight: 172 | FBI #: [redacted] | CII #: [redacted] |
| Booking #: Deceased | Primary Charge: 245 (a)(1) PC | Secondary Charge: | |
| Coroner Case? ☐ | Coroner Case #: - | Intoxication/Drug Usage? ☒ | Substance Used: Alcohol |
| Armed? ☒ | Apprehended? ☒ | Mental Illness? ☐ | Criminal History? [redacted] |
| Vehicle Make: | | Model: | Year: |

**S __**

| | | | |
|---|---|---|---|
| Last Name: | | First Name: | M.I.: |
| AKA Last Name: | | First Name: | M.I.: |
| Sex: Race: | Street Address: | City: | State & Zip Code: |
| Work Phone: | Home Phone: | Social Security #: | Driver's License #: |
| Age: D.O.B. | Height: Weight: | FBI #: | CII #: |
| Booking #: | Primary Charge: | Secondary Charge: | |
| Coroner Case? ☐ | Coroner Case #: | Intoxication/Drug Usage? ☐ | Substance Used: |
| Armed? ☐ | Apprehended? ☐ | Mental Illness? ☐ | Criminal History? ☐ |
| Vehicle Make: | | Model: | Year: |

**S __**

| | | | |
|---|---|---|---|
| Last Name: | | First Name: | M.I.: |
| AKA Last Name: | | First Name: | M.I.: |
| Sex: Race: | Street Address: | City: | State & Zip Code: |
| Work Phone: | Home Phone: | Social Security #: | Driver's License #: |
| Age: D.O.B. | Height: Weight: | FBI #: | CII #: |
| Booking #: | Primary Charge: | Secondary Charge: | |
| Coroner Case? ☐ | Coroner Case #: | Intoxication/Drug Usage? ☐ | Substance Used: |
| Armed? ☐ | Apprehended? ☐ | Mental Illness? ☐ | Criminal History? ☐ |
| Vehicle Make: | | Model: | Year: |

**S __**

| | | | |
|---|---|---|---|
| Last Name: | | First Name: | M.I.: |
| AKA Last Name: | | First Name: | M.I.: |
| Sex: Race: | Street Address: | City: | State & Zip Code: |
| Work Phone: | Home Phone: | Social Security #: | Driver's License #: |
| Age: D.O.B. | Height: Weight: | FBI #: | CII #: |
| Booking #: | Primary Charge: | Secondary Charge: | |
| Coroner Case? ☐ | Coroner Case #: | Intoxication/Drug Usage? ☐ | Substance Used: |
| Armed? ☐ | Apprehended? ☐ | Mental Illness? ☐ | Criminal History? ☐ |
| Vehicle Make: | | Model: | Year: |



See Other Side




LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
CURTIS A. HAZELL • Assistant District Attorney

JANICE L. MAURIZI • Director

February 19, 2009

Captain David Smith
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File # 08-0492
L.A.S.D. DR # 008-17909-2112-013

Dear Captain Smith:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 10, 2008, fatal shooting of Gerardo Arvallo by Deputy Clarence Gallegos of the Los Angeles County Sheriff's Department (LASD). We find that Deputy Gallegos acted lawfully in defense of others.

The District Attorney's Command Center was notified of this incident at 1:00 a.m. on August 10, 2008. The District Attorney Response Team, consisting of Deputy District Attorney Susan Schwartz and Supervising Investigator [redacted] responded to the scene. They were given a briefing of the circumstances and a walk-through of the scene by LASD investigators.

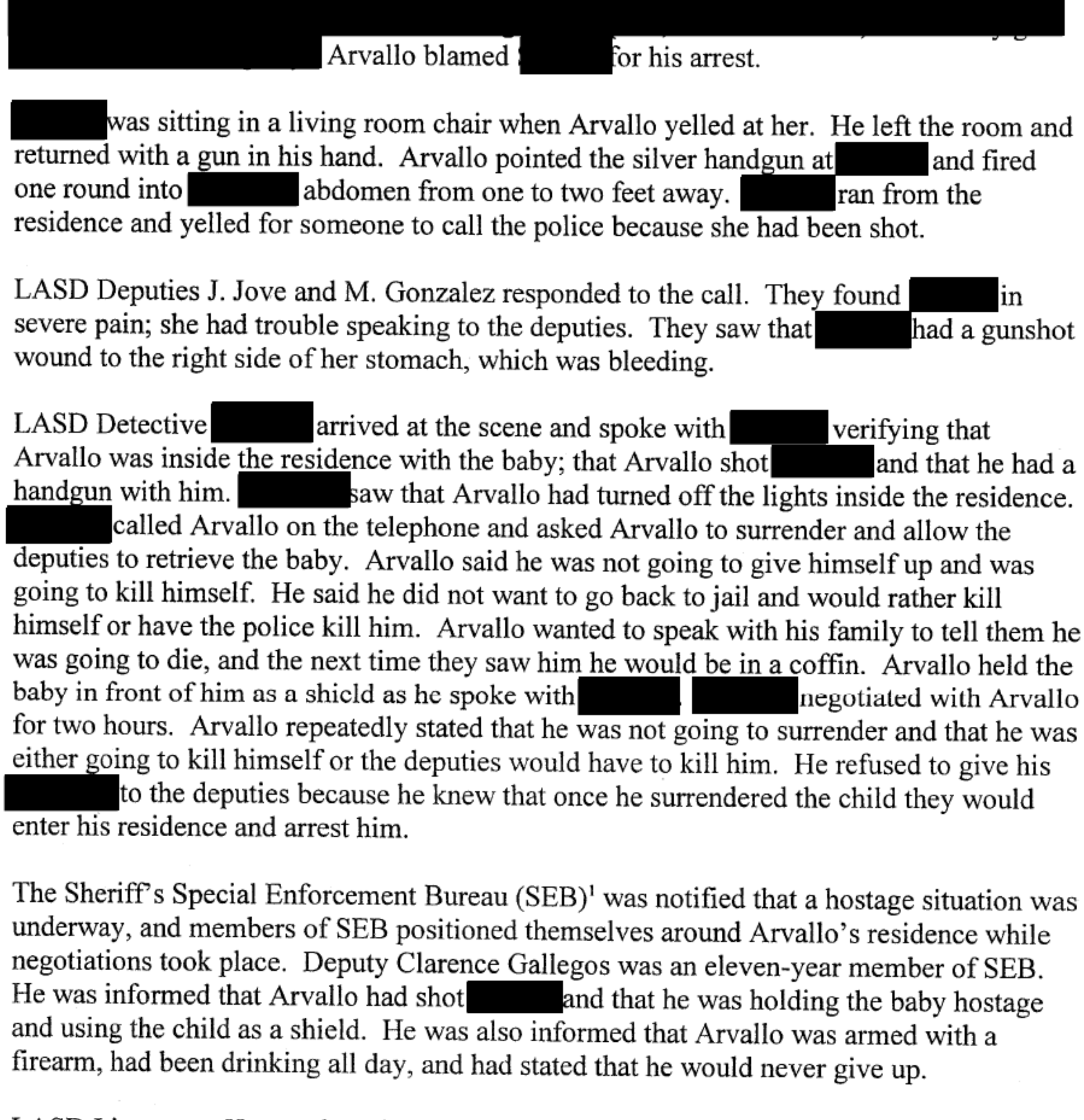
The following analysis is based upon the police reports and witnesses' statements submitted to this office on December 1, 2008 by Detectives J. Shipe and A. Ferguson. No compelled statements were considered in our analysis.

**FACTUAL ANALYSIS**

On August 10, 2008, at approximately 8:30 p.m., Gerardo Arvallo, his two-year-old [redacted] and her [redacted] were in their residence on Los Flores Boulevard in Lynwood. Arvallo had been drinking all day and had, according to [redacted] consumed a 24-pack of Bud Light beer. Arvallo drank alcohol every day and became violent when he drank.

Arvallo had been dating [redacted] since February, 2005. He had been verbally and physically abusive to her during the relationship, [redacted]

Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012-3210
(213) 974-3888
WEBSITE: http://da.co.la.ca.us



[redacted] Arvallo blamed [redacted] for his arrest.

[redacted] was sitting in a living room chair when Arvallo yelled at her. He left the room and returned with a gun in his hand. Arvallo pointed the silver handgun at [redacted] and fired one round into [redacted] abdomen from one to two feet away. [redacted] ran from the residence and yelled for someone to call the police because she had been shot.

LASD Deputies J. Jove and M. Gonzalez responded to the call. They found [redacted] in severe pain; she had trouble speaking to the deputies. They saw that [redacted] had a gunshot wound to the right side of her stomach, which was bleeding.

LASD Detective [redacted] arrived at the scene and spoke with [redacted] verifying that Arvallo was inside the residence with the baby; that Arvallo shot [redacted] and that he had a handgun with him. [redacted] saw that Arvallo had turned off the lights inside the residence. [redacted] called Arvallo on the telephone and asked Arvallo to surrender and allow the deputies to retrieve the baby. Arvallo said he was not going to give himself up and was going to kill himself. He said he did not want to go back to jail and would rather kill himself or have the police kill him. Arvallo wanted to speak with his family to tell them he was going to die, and the next time they saw him he would be in a coffin. Arvallo held the baby in front of him as a shield as he spoke with [redacted]. [redacted] negotiated with Arvallo for two hours. Arvallo repeatedly stated that he was not going to surrender and that he was either going to kill himself or the deputies would have to kill him. He refused to give his [redacted] to the deputies because he knew that once he surrendered the child they would enter his residence and arrest him.

The Sheriff's Special Enforcement Bureau (SEB)[1] was notified that a hostage situation was underway, and members of SEB positioned themselves around Arvallo's residence while negotiations took place. Deputy Clarence Gallegos was an eleven-year member of SEB. He was informed that Arvallo had shot [redacted] and that he was holding the baby hostage and using the child as a shield. He was also informed that Arvallo was armed with a firearm, had been drinking all day, and had stated that he would never give up.

LASD Lieutenant Hanson broadcast by radio that this was a legitimate hostage situation. Gallegos had an unobstructed view of the residence window. He was concerned for the safety of the child because when a hostage is used as a shield there is a high probability that the hostage will be injured or killed. Based on the information he received, Gallegos believed the baby was in immediate danger of being murdered by Arvallo.

When Arvallo showed his head in the residence window, Gallegos fired one round from his department-issued H&K MP-5 9 millimeter machine gun. Arvallo disappeared from view

[1] SEB conducts high risk operations, including hostage rescue missions.

and other members of the SEB immediately entered the residence and rescued the baby. Arvallo sustained a single gunshot wound to his left eye and was pronounced dead by paramedics at 11:09 p.m.

Deputy Medical Examiner Ajay Panchal, M.D. performed an autopsy on Arvallo's body on August 13, 2008 and determined the cause of death to be a gunshot wound to the left eye/left lower eyelid. A chemical analysis of Arvallo's blood showed his vitreous blood alcohol level to be .41% (more than eight times the legal limit for driving under the influence of alcohol).

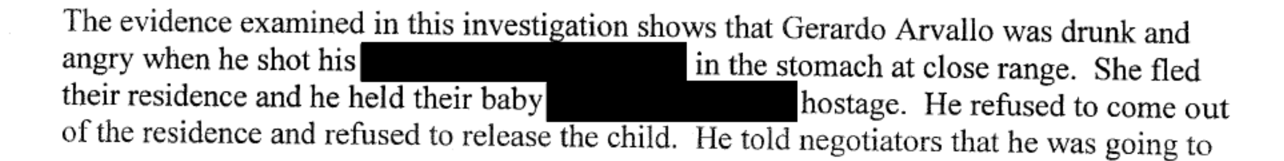
## LEGAL ANALYSIS

Penal Code §§ 692-694 specifically authorize any individual protecting himself or another to use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. (See CALJIC 5.30, 5.32)

The use of deadly force in self-defense or in defense of others is considered justifiable if the person claiming the right to use self-defense actually and reasonably believed that he or the person being defended is in imminent danger of death or great bodily injury. People v. Mercer (1962) 210 Cal.App.2d 153, 161; People v. Glover (1903) 141 Cal. 233, 239 and People v. Ortiz (1923) 63 Cal.App. 662, 668.

In Graham v. Connor (1989) 490 U.S. 386, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances" of the particular incident "including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (*Id.*, at 396) Further the Court stated, "[t]he "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight." (*Id.*, at 397) Moreover, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation." (*Id.*, at 397-398)

## CONCLUSION


The evidence examined in this investigation shows that Gerardo Arvallo was drunk and angry when he shot his [redacted] in the stomach at close range. She fled their residence and he held their baby [redacted] hostage. He refused to come out of the residence and refused to release the child. He told negotiators that he was going to

kill himself, or have the deputies kill him. As he spoke with the negotiator, he used his [redacted] as a human shield.

Deputy Gallegos, a member of a team trained to deal with hostage rescue situations, was aware of the grave danger Arvallo posed to his [redacted] Reasonably fearing that Arvallo would kill the baby, Gallegos discharged his weapon once, striking Arvallo in the eye and killing him.

We find that Deputy Clarence Gallegos acted in lawful defense of others. We are closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By

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c: Deputy Clarence Gallegos, #[redacted]